it is the largest local exchange carrier and second largest cellular carrier in the U.S.[10] GTE serves more local access lines than the largest Bell Operating Company ("BOC") in addition to providing other services, such as interexchange services, telecommunications equipment manufacturing and information services.[11] At times it is difficult to distinguish MTC from GTE since GTE has voluntarily included MTC in its access tariff (i.e., GTOC Tariff F.C.C. No. 1)[12]; files rates with the Commission on behalf of MTC[13]; and submits other Commission filings on behalf of MTC.[14]

The Commonwealth is taking steps to become an increasingly important center for trade, leisure and communications in the Pacific Rim. For example, the Commonwealth is scheduled to become part of the North American Numbering Plan effective July 1, 1997.[15] Section 254(g) of the Telecommunications Act of 1996, as amended ("1996 Act"), also mandates that the

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[10] See Lehman Brothers, Inc., GTE Corp.-Company Report, May 25, 1995 (Thompson Financial Networks) at 2 ("GTE Corp.-Company Report"); Argus Research Corporation, Century Telephone/GTE Corp./Telephone Data Systems, Inc.-Company Report, November 3, 1994 (Thompson Financial Networks).

[11] Michael K. Kellogg et al., Federal Telecommunications Law § 8.1 (1992).

[12] See GTE Telephone Operating Companies Transmittal No. 783, filed April 19, 1993, Description and Justification at 3.

[13] See GTE Telephone Operating Companies Tariff F.C.C. No. 1 at 3.

[14] See, e.g., Reply Comments of GTE Service Corporation and its affiliated domestic telephone and interexchange companies, Notice of Proposed Rulemaking in CC Dkt. No. 96-61 (May 3, 1996); Comments of GTE Service Corporation and its affiliated domestic telephone operating companies, Notice of Proposed Rulemaking in CC Dkt. No. 96-61 (April 19, 1996); Comments of GTE Service Corporation on behalf of Micronesian Telecommunications Corporation, to Petition for Rulemaking to Provide Rate Integration in AAD 95-86 (August 15, 1995).

[15] See Letter from the Commonwealth of the Northern Mariana Islands to Regina Keeney, Chief, Common Carrier Bureau, at 3 (June 19, 1996).

Commonwealth be brought within the Commission's rate integration policies.[16] As reflected by the instant filing, the Commonwealth plans to continue pursuing policies designed to foster increased competition in the provision of telecommunications and high technology in the future.

As demonstrated below, MTC's Application should not be granted unless the Commission applies appropriate regulatory safeguards to MTC's provision of IMTS to China.[17]

II. DISCUSSION

In the GTE Consent Decree proceeding, the District Court recognized that "in any situation where both competitive and monopoly services are offered over jointly-owned or jointly-operated facilities, there is a significant danger of cross-subsidization which will harm competitors and competition in the unregulated competitive markets."[18] The Court has also acknowledged that GTE's provision of both interexchange and local exchange services gives GTE "both the incentive and the opportunity to use its control over the local monopolies to discriminate in favor of its own interexchange carrier."[19]

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[16] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)(to be codified at 47 U.S.C. §§ 151 et seq.); In re Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended, Notice of Proposed Rulemaking, CC Dkt. No. 96-61 (March 25, 1996).

[17] In its Fifth Report and Order, the Commission recognized the need for imposing conditions on carriers which pose regulatory problems. In re Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fifth Report and Order, 98 FCC 2d 1191 (1984) ("Fifth Report and Order"). The Commission stated, "If we find that particular interexchange carriers affiliated with exchange telephone companies have market power or otherwise pose regulatory problems, we could require them to file facilities applications and tariffs subject to dominant regulation, or impose other conditions. Id.

[18] United States v. GTE Corporation, Civil No. 83-1298 (HHG) at 8 (1995).

[19] United States v. GTE Corporation, 603 F.Supp. 730, 732 (D.D.C. 1984).

The Commission itself has stated that "[w]hile we have no policy against LECs entering long distance markets, we have recognized that absent safeguards such entry carries with it a potential for anticompetitive conduct."[20] As an example of anticompetitive conduct, the Commission has stated:

> "the monopoly possessed by PRTC (and its affiliate PRCA) over the provision of intra-island services raises concerns that PRTC could subsidize its off-island activities by shifting costs associated with these activities to its monopoly intra-island activities or otherwise favor its own interexchange operations. Such activities would hamper competition in off-island markets by, for example, enabling PRTC to set prices on off-island service offerings beneath its costs and thereby underprice its competitors, or allowing PRTC to undermine the quality of its competitors' services."[21]

Since MTC's Application poses a serious potential for unlawful cross-subsidization as well as improper discrimination, the Commission should not grant MTC's Application without imposition of the conditions discussed below. As MTC is the monopoly provider of local exchange services in the Commonwealth as well as dominant provider of interstate and international off-island services, MTC can potentially cross-subsidize its off-island services with local exchange monopoly revenues. In addition, since MTC is a monopoly provider of exchange access services and controls access to all off-island facilities, MTC has the incentive and ability to discriminate against competitors. These concerns are more than mere conjecture. IT&E, MTC's only competitor with a point-of-presence in the Commonwealth interexchange market, has

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[20] In re Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off of the Island of Puerto Rico, Report and Order, 2 FCC Rcd 6600 (1987) ("PRTC Report and Order").

[21] Id.

alleged that MTC has in fact engaged in such anticompetitive behavior.[22]

In the attached Memorandum filed with the District Court, IT&E alleged that MTC may not be imputing the same access charges to its own interexchange operation as it charges to other IXCs.[23] IT&E's Memorandum states that MTC currently charges IT&E approximately twice as much for access service as it charges its own local exchange subscribers for a local toll call.[24] Based on this price disparity, "IT&E has reason to believe that MTC is either discriminating against IT&E by either failing to impute the same access charges to its own interexchange operation or cross-subsidizing its interexchange operations with revenues from its local exchange operation."[25] IT&E goes on to state that since MTC fails to maintain complete structural separation between its local exchange and interexchange operations, there can be no guarantee that it does not engage in improper cross-subsidization.[26]

IT&E's Memorandum also alleges that MTC has engaged in improper cross-subsidization in implementing Feature Group D balloting. According to IT&E, MTC sent subscribers presubscription ballots listing itself (under the MTC name) along with IT&E and PCI

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[22] Letter from Margaret L. Tobey and Phuong N. Pham, Counsel for IT&E Overseas, Inc., to Regina M. Keeney, Chief, Common Carrier Bureau, CC Dkt. No. 96-61, at n.7 (June 19, 1996).

[23] Memorandum of IT&E Overseas, Inc. in Opposition to GTE Corporation's Motion to Terminate the Decree, United States of America v. GTE Corporation, Civil No. 83-1298 (HHG) (filed June 26, 1995) at 12-13 ("Memorandum of IT&E") (attached as Exhibit A).

[24] Id.

[25] Id. at 13.

[26] Id.

Communications Inc. as choices for the subscriber's primary interexchange carrier ("PIC").[27] According to IT&E, MTC's marketing and identifying itself as an IXC PIC choice constituted a subtle form of improper cross-subsidy.[28]

Finally, IT&E's Memorandum alleges that MTC discriminatorily impeded access to IT&E's services through MTC's Total Call Blocking Feature ("TDN"). According to IT&E,

> For example, after MTC converted to FG-D equal access in June 1993, MTC continued to maintain a total long distance call blocking ("TDN") function, which prevented subscribers, who already had selected their PIC in the resubscription balloting process, from accessing their PIC by direct dialing a "011+" code. Moreover, subscribers could not override the TDN function by dialing either a "10XXX" alternative access code or a Feature Group B "950-0XXX" access code. This total call blocking function affected not only subscribers' private telephone lines, but also certain public pay telephones. IT&E has reason to believe that while TDN function prevented subscribers from accessing IT&E's services, it did not similarly prevent subscribers from accessing MTC's long distance services.[29]

Based on MTC's incentive and ability to engage in both unlawful cross-subsidization and discrimination as well as the allegations of specific instances of such anticompetitive conduct discussed above[30], the Commonwealth believes that MTC's Application should not be granted without the imposition of appropriate safeguards.

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[27] Id. at 9.

[28] Id.

[29] Id. at 11.

[30] While parties have attempted to raise anticompetitive concerns with respect to MTC in the past, the Commission has been inclined to defer rulings with respect to such issues to the District Court which has enforcement authority over the GTE Consent Decree. See, e.g., In re Micronesian Telecommunications Corp., Application for Authority under Section 214 of the Communications Act of 1934, as amended, to Establish International Telecommunications Services, Order, Authorization and Certification, 8 FCC Rcd 7002 (1993). Since the GTE Consent Decree has been supplanted by the 1996 Act, it is now incumbent upon the Commission to address anticompetitive concerns posed by MTC's integrated monopoly structure.

Accordingly, the Commonwealth proposes that the Commission take the following actions and impose the following conditions prior to granting MTC's Application.

MTC's Regulatory Status as a Dominant Carrier Should be Clarified--The Commission should confirm MTC's status as a dominant carrier.[31] To date, the Commission has not definitively pronounced MTC's regulatory status with respect to off-island international and domestic services.[32] Some actions by the Commission suggest non-dominant treatment of MTC[33], while other actions signify the opposite.[34] The Commonwealth urges the Commission to settle this matter so that other carriers and the public may understand the regulatory requirements to which MTC is subject.

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[31] It appears in the present proceeding that the Commission is treating MTC as a non-dominant carrier by placing MTC's Application on Public Notice subject to streamlined processing. Public Notice, ITC-96-315 (June 21, 1996). The Commonwealth believes that as a dominant carrier MTC should not receive streamlined processing; therefore, the Commonwealth requests that the Commission remove MTC's Application from the streamlined process.

[32] While parties have argued MTC's regulatory status before the Commission, the Commission, for whatever reason, did not address the matter in its respective decisions. See, e.g., In re Micronesian Telecommunications Corporation Revisions to Tariff F.C.C. No. 1, Order, 8 FCC Rcd 4141 (1993); In re Micronesian Telecommunications Corporation Revisions to Tariff F.C.C. No. 1, Order, 8 FCC Rcd 4434 (1993); In re Micronesian Telecommunications Corporation Revisions to Tariff F.C.C. No. 1, Order, 8 FCC Rcd 5148 (1993).

[33] See, e.g., Public Notice, ITC-96-315 (June 21, 1996); In re Micronesian Telecommunications Corporation; Application for Authority to Acquire and Operate Facilities for Provision of Service between the Northern Mariana Islands and Various Pacific Points, Order, Authorization and Certificate, 2 FCC Rcd 1105 (1987).

[34] See, e.g., Memorandum of IT&E, at 6, citing Policies and Rules Concerning Rate for Dominant Carriers, 6 FCC Rcd 4819 (1991). See also In re Micronesian Telecommunications Corporation; Application for Section 214 Authority to Acquire from Comsat Earth Stations, Inc., Memorandum Opinion, Order and Authorization, 3 FCC Rcd 1617 (1988) ("MTC is dominant in its provision of international multi-purpose earth station services in the Northern Marianas. . . . Moreover, MTC, as the sole provider of international multi-purpose earth station services for the Commonwealth of the Northern Marianas, does not face effective competition in its market.") Id.

The Commission regulates certain providers of IMTS from domestic, non-contiguous U.S. points as dominant carriers.[35] The Commission has determined that such carriers do not face effective competition in their markets and therefore would be able to act and price their services anticompetitively.[36] The Commission has set forth the circumstances under which a carrier should be deemed dominant:

> We find these carriers dominant because they do not currently face effective competition in their markets. Thus, but for Commission oversight, they would be able to act and price anti-competitively. Additionally, most of these carriers also control the local exchange facilities for the market in question. This constitutes a classic bottleneck and gives these carriers the ability to exclude meaningful competition through discriminatory practices.[37]

As demonstrated above, MTC clearly operates in such an environment and, therefore, it is necessary to impose dominant status on MTC. Not only is MTC the sole provider of local exchange and access services, but it is also the dominant provider of interstate and international interexchange services. MTC also controls access to all off-island facilities through its ownership of earth station facilities necessary to reach the Pacific region INTELSAT satellites, microwave links to Guam and the submarine cable to Guam scheduled for completion by the end of this year. Furthermore, as a wholly owned subsidiary of Hawaiian Telephone[38] which is, in turn, owned by GTE, no legitimate reason exists to treat MTC any different particularly in light of its

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[35] In re International Competitive Carrier Policies, Report and Order, 102 FCC 2d 812, 831 (1985) ("International Competitive Carrier Report").

[36] PRTC Report and Order, 2 FCC Rcd at 6611.

[37] International Competitive Carrier Report, 102 FCC 2d at 831.

[38] The Commission has specifically designated Hawaiian Telephone as a dominant carrier. Id. at 832.

dominance in the Commonwealth telecommunications market.

MTC Should be Subject to Full Structural Separation--Given MTC's unique monopoly position in the Commonwealth, the Commission should only permit it to provide the services requested in the Application through a fully separated subsidiary. As indicated supra, MTC's dominance of the Commonwealth market is truly unique.

Accordingly, MTC should only be permitted to provide the requested services through a meaningful separate subsidiary requirement. The Commonwealth proposes that the Commission apply to MTC the same structural and transactional requirements which Section 272 of the 1996 Act imposes on BOC in-region interexchange services.[39] In addition to the Section 272(b) requirements, the Commonwealth would also propose the following additional requirement: MTC and its competitive subsidiary would be prohibited from providing joint or bundled services, as well as joint information or jointly marketing its telecommunications services to the public. Further, the Commission should make clear that MTC's international affiliate 1) may not jointly own transmission or switching facilities with MTC (i.e., the LEC) and 2) must obtain LEC services at tariffed rates and conditions. While these two conditions would appear to be implicit in the Section 272 restrictions, they have been separately established by the Commission applicable to IXCs affiliated with independent LECs, and should certainly apply here.[40]

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[39] Section 272 requires the separate affiliate to 1) operate independently from the BOC; 2) maintain separate books, records and accounts; 3) have separate officers, directors, and employees; 4) not obtain credit under terms that would permit a creditor, upon default, to have recourse to the assets of the BOC; and 5) conduct all transactions with the BOC on an arm's length basis and be preserved in writing available for public inspection. See 1996 Act, 47 U.S.C. §272(b).

[40] See Fifth Report and Order, 98 FCC 2d at 1191 (1984). These conditions require the non-dominant affiliate to: 1) maintain separate books of account; 2) not jointly own transmission or

Application of the foregoing conditions to MTC's proposed China service is consistent with Congress' belief that BOCs should only provide in-region services via the Section 272 separate subsidiary. All of MTC's interexchange services are "in-region" since calls necessarily originate within its monopoly local exchange service territory. Given MTC's monopoly power in the Commonwealth, an even more compelling case can be made for applying the Section 272(b) requirements to MTC than the BOCs.

This separate subsidiary proposal would help ensure that anticompetitive activities, such as those alleged by IT&E and discussed supra at 7-8, would not occur.[41]

Alternatively, Special Nonstructural Safeguards Should be Applied--In the absence of structural separation, the Commission should, at a minimum, impose special non-structural safeguards prior to authorizing MTC's provision of service to China. Such safeguards could, for example, be comparable to those required by the Commission as a condition to the grant of Puerto Rico Telephone Company's ("PRTC's") Section 214 authority.[42]

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switching facilities with the LEC; and 3) obtain any exchange telephone company services at tariffed rates and conditions. Id. at 1198.

[41] Although this filing is necessarily limited to the services proposed in MTC's Application, the Commonwealth believes that the anticompetitive concerns raised herein apply broadly to MTC. In other words, the potential for unlawful cross-subsidization between MTC's local exchange operation and its off-island domestic and international services extends to all off-island services for which MTC is authorized. Similarly, MTC's ability and incentive to discriminate against competitors exists in the context of all of its off-island services. The Commonwealth, therefore, believes that the Commission should exercise its broad authority under the Communications Act of 1934, as amended, ("Act") (47 U.S.C. 151 et seq.) to apply the separate subsidiary requirement proposed herein to MTC broadly, extending to all off-island services that MTC is authorized to provide under the Act.

[42] See PRTC Report and Order, supra, at n.20.

First, the Commission should compel MTC to utilize separate books of account. Separate, detailed books of account would permit the Commonwealth, its citizens and other carriers to monitor MTC's behavior and ensure that MTC is not engaging in cross-subsidization or anticompetitive behavior.

Second, the Commission should direct MTC to publicly disclose certain types of network information to off-island competitors in a timely manner so that those competitors have the necessary information to interconnect with the island network. The particulars of this requirement should be consistent with the requirements set forth in the PRTC Report and Order.[43]

Third, the Commission should prohibit MTC from sharing customer proprietary network information ("CPNI").[44] To prevent the misuse of CPNI, the Commonwealth urges the Commission to require MTC to establish a separate division to handle CPNI for customers of other carriers.

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[43] PRTC Report and Order, 2 FCC Rcd at 6611-6612. The Commission required PRTC to provide authorized off-island carriers with the following information: notification of new or modified network configurations or services affecting interconnection for any portion of a carrier's service area; disclosure of the above information at the make/buy point; disclosure of technical network information and market information to the public twelve months prior to introduction of network configuration or service; disclosure of the above information after the make/buy point if such information would have been subject to disclosure had PRTC been aware of it at the make/buy point; disclosure of planned outages and accidental outages. Id.

[44] In the PRTC Report and Order, the Commission directed PRTC to make customers' CPNI available on the same terms, conditions and price to competing off-island carriers upon the customer's request. PRTC Report and Order, 2 FCC Rcd at 6612. In addition, the Commission required PRTC to establish procedures to prevent certain personnel from obtaining CPNI in addition to making certain customers aware of their CPNI rights. Id. Finally, the Commission prohibited any off-island service until it approved a plan explaining PRTC's implementation of these requirements. Id.

Fourth, the Commission should require MTC to disclose certain types of line and usage information. This stipulation would require MTC to provide off-island carriers, on request, with the data (disaggregated by end office or wire center) such as historical and projected numbers of business and residence telephone lines and average usage per line.[45]

The Commonwealth seriously questions the ability of the above non-structural safeguards to control MTC's incentive and ability to engage in anticompetitive behavior. Instead, the Commonwealth believes that only structural separation (i.e., requiring MTC to establish a separate subsidiary) affords adequate safeguards given existing conditions in the Commonwealth. Nonetheless, should the Commission be disinclined to establish a separate subsidiary requirement, the Commonwealth alternatively urges the Commission the impose the above special nonstructural safeguards at a minimum.

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[45] Id. In its PRTC Report and Order, the Commission required PRTC to update this information no less than semi-annually. Id.

III. CONCLUSION

Accordingly, the Commonwealth believes that MTC's Application should not be granted unless the Commission extends appropriate safeguards to MTC's provision of off-island services. Such safeguards should preferably encompass meaningful structural separation as discussed herein or, alternatively, non-structural or other appropriate safeguards.

Respectfully submitted,

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Dated: July 12, 1996

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. GTE CORPORATION, Defendant.	)	Civil No. 83-1298 (HHG)

MEMORANDUM OF IT&E OVERSEAS, INC. IN OPPOSITION TO GTE CORPORATION'S MOTION TO TERMINATE THE DECREE

IT&E Overseas, Inc. ("IT&E"), by its attorneys and pursuant to the Consent Motion to Establish Briefing Schedule, filed April 13, 1995, respectfully submits this memorandum in opposition to the motion of GTE Corporation ("GTE") to terminate the consent decree entered against it in the above-captioned proceeding.

I. INTRODUCTION

IT&E is an interexchange carrier located and operating in Saipan in the Commonwealth of the Northern Mariana Islands ("CNMI") since 1986.1/ IT&E currently

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1/ The CNMI includes the islands of Saipan, Tinian, and Rota, with a total population of 43,345, according to the 1990 U.S. Census. The CNMI is located in the Western Pacific approximately 3,300 miles from Hawaii and 5,500 miles from the U.S. mainland. Prior to 1986, the Northern Mariana Islands were not considered U.S. territories, but were trust territories under the trusteeship of the U.S. Thompson v. Kleppe, 424 F.Supp. 1263 (D. Hawaii 1976). As trustee of the Northern Mariana Islands, the U.S. exercised full powers of administration, legislation, and jurisdiction, but not sovereignty. United States v. Covington, 783 F.2d 1052 (9th Cir. 1985). At the termination of the trusteeship in 1986, the Northern Mariana Islands became a U.S. commonwealth.

is the only competitor of Micronesian Telecommunications Corporation ("MTC"), a GTE Operating Company ("GTOC"), for both domestic and international switched services originating from the CNMI. Because the consent decree protects competing interexchange carriers from the unfair trade practices of GTE, IT&E, as a provider of interexchange services, has an immediate and direct interest in any action taken by this Court to modify or terminate the consent decree.

In its Motion to Terminate the Decree, filed on April 13, 1995, GTE claims that there is no longer any legal basis for enforcing the consent decree's prohibition against the provision of interexchange services by GTE Operating Companies ("GTOCs"), since GTE has divested all of its interests in the telecommunications enterprises of Southern Pacific Company (the "Sprint assets"). GTE further contends that the consent decree's provisions regarding information services have been superseded by federal regulation.

GTE, however, has not demonstrated that the decree's purposes have been fully achieved. As the United States has asserted in its Opposition to GTE's Motion, filed on June 5, 1995, GTE has failed to show that the divestiture of the Sprint assets has in any way eliminated the incentive and ability of the GTOCs to use their local exchange monopolies to impede competition in the interexchange market. GTE has also failed to show that existing federal regulations provide an adequate substitute for the decree's restrictions regarding the GTOCs' provision of information services. As demonstrated below, not only do the GTOCs continue to have the incentive and ability to use their local exchange monopolies to impede competition in the markets for interexchange and information services, but they have in fact

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a U.S. commonwealth.

exercised their monopoly power to gain unfair advantages in the competitive interexchange markets.

II. BACKGROUND

GTE is the largest integrated telephone company and ranks overall as the 15th largest company in the United States today.2/ It serves more local access lines than the largest Bell Operating Company and also engages in other lines of business, such as interexchange services, telecommunications equipment manufacturing, and information services.3/

On May 4, 1983, the United States filed against GTE an antitrust complaint challenging GTE's acquisition of the Sprint assets as violative of Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint also challenged GTE's provision of information services as violative of Section 2 of the Act, 15 U.S.C. § 2. Simultaneously with the filing of the complaint, the parties filed a proposed consent decree to settle the case.

In reviewing the proposed consent decree under the Tunney Act, 15 U.S.C. § 16(b)-(h), this Court stated that the suit against GTE was based on the same antitrust theories as the suit against AT&T in United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982) ("AT&T"). United States v. GTE Corporation, 603 F.Supp. 730, 732 (D.D.C. 1984) ("GTE"). In fact, both the United States Department of Justice ("DOJ") and GTE agreed that the GTE case should be treated as related to the AT&T case "because of the similarity of the issues with AT&T . . . and the desirability of consistent interpretations." Id. at 732 n.8. Like the

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2/ The Forbes 500s Annual Directory, Forbes, April 24, 1995, at 208.

3/ Michael K. Kellogg et al., Federal Telecommunications Law § 8.1 (1992).

AT&T case, the suit against GTE was premised on the rationale that a provider of both local monopoly telecommunications services and competitive long distance services has "the incentive and the ability to foreclose or to impede competition in the competitive (or potentially competitive) market by discriminating in favor of its own long distance carrier" as well as "the incentive and the ability to cross-subsidize the competitive operations with profits from the regulated monopoly operations and thereby to eliminate or impair competition." Id. at 732.

According to the DOJ, GTE not only had the incentive and ability to eliminate or impede competition in the interexchange market, but also had in fact used its control of essential local switching and transmission facilities to discriminate against interexchange carriers other than AT&T and hinder competition in the interexchange market since at least 1973. Id. at 735. Thus, the DOJ asserted that the objective of the proposed consent decree, as with the AT&T consent decree, is "to circumscribe this kind of interference with the free competitive market by such practices." Id. at 732. Consequently, in approving the proposed consent decree, this Court asserted that the common purpose of both the GTE and AT&T decrees is "to prevent the defendant companies from impeding competition, by the use of local telecommunications monopoly bottlenecks, in markets where such competition is technologically feasible." Id. at 752.

Although the GTE consent decree, as approved and entered, did not prohibit GTE from acquiring the Sprint assets, it imposed a number of conditions designed to limit any incentive or ability of the GTOCs to discriminate against other interexchange carriers or to cross-subsidize GTE's competitive operations.4/ Notably, Section V(C) of the decree forbids the GTOCs from providing interexchange services or owning related facilities,5/ while Section IV requires strict structural separation between the GTOCs and GTE's interexchange operations. In addition, Sections V(A) and (B) require the GTOCs to provide equal access to all interexchange carriers and information service providers.

III. DISCUSSION

GTE requests this Court to terminate the consent decree on the theory that the decree's purposes have been fully achieved. Yet, the truth of the matter is that GTE, through its operating companies, continues to frustrate the decree's purpose of preventing the abuse of bottleneck local exchange facilities to impair competition in the interexchange and information services markets. The pressing need today is not for the relaxation of GTE's obligation to provide equal access and refrain from anticompetitive behavior, but rather for the more vigorous enforcement of the consent decree, particularly with respect to MTC.

Under Section II(K) of the consent decree, MTC is a GTOC subject to the decree's provisions because it is owned by Hawaiian Telephone Company ("HTC"), another GTOC that is directly owned by GTE. MTC is both the local exchange carrier serving approximately 14,000 lines in the CNMI6/ and the CNMI's dominant domestic and

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4/ The final consent decree is reported at 1985-1 Trade Cas. (CCH) ¶66,355 (D.D.C. 1985).

5/ Section V(C), however, carves out a narrow exception to its interexchange prohibition by allowing HTC and General Telephone Company of Alaska to provide services "between Hawaii and Alaska, respectively, and points outside of the United States, and owning the assets necessary to provide such services." GTE Consent Decree § V(C).

6/ Duff & Phelps Credit Rating Co. Downgrades Ratings of GTE Hawaiian Telephone Company, Inc., PR Newswire, February 22, 1995, available in LEXIS, News Library.

international interexchange carrier. MTC is the sole source of exchange access services in the CNMI, both switched and special and, as such, is a dominant carrier under the rules and regulations of the Federal Communications Commission ("Commission"). Policies and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 4819 (1991). MTC also controls access off the islands by means of its control and ownership of the essential earth station facilities necessary to reach the Pacific region's INTELSAT satellites, and also through its control of important inter-island microwave facilities essential to reach Guam, which is located approximately 60 miles from the CNMI.

Since 1986, IT&E has competed with MTC for the provision of interexchange services to the CNMI. While IT&E competes with MTC's long distance service, it also relies on MTC's local exchange operations to provide necessary exchange access services. Since entering the market for the provision of interexchanges services to the CNMI in 1986, IT&E has endured and continues to endure repeated anticompetitive abuses and decree violations by MTC. Namely, MTC currently competes with IT&E for the provision of interexchange services in violation of Section V(C) of the decree and also denies IT&E equal access to its essential exchange facilities in violation of Sections V(A) and V(B).

A. MTC's Prohibited Provision of Interexchange Services

Section V(C) of the consent decree states that "[n]o GTOC shall provide interexchange telecommunications services or own, individually or jointly with GTE or any other person, facilities that are used to provide such services." According to Section II(P), "interexchange telecommunications" generally refers to "telecommunications between a point or points located in one exchange or serving area . . . and a point or points located in one or more other such areas or a point outside such an area." An "exchange area" is defined by Section II(H) as a geographic area "established by a GTOC within which the GTOC has the facilities and capability . . . to provide traffic switching above end offices and delivery and receipt of such traffic at a point or points designated by an interexchange carrier within such exchange areas for the connection of its facilities with those of the GTOC."7/

Because the CNMI is a distinct U.S. geographic area in which MTC, a GTOC, has the transmission and switching facilities necessary to provide equal access services to other interexchange carriers, the CNMI qualifies as an exchange area. Thus, under Section II(P) of the decree, telecommunications services between the CNMI and points outside the CNMI are deemed "interexchange" services, which Section V(C) generally prohibits the GTOCs from providing.

Although Section V(C) provides an "international services" exception for HTC and General Telephone Company of Alaska, this exception to the general interexchange prohibition is expressly limited to allow HTC and General Telephone Company of Alaska to provide services only "between Hawaii and Alaska, respectively, and points outside of the United States." At the time of the consent decree, this Court noted that both the DOJ and GTE agreed that the "international services" exception would include HTC's services between Hawaii and U.S. domestic points such as the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. GTE, 603 F.Supp. at 751 n.92. At no point, however, was there agreement

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7/ A "serving area," on the other hand, is a geographic area not falling within the definition of an "exchange area," but in which a GTOC nonetheless provides exchange telecommunications and exchange access services. See GTE Consent Decree § II(R). The critical distinction between an "exchange" and a "serving" area depends on whether the GTOC serving the area has "control transmission and switching facilities necessary to provide the access services required for equal access to all interexchange carriers." GTE, 603 F.Supp. at 746 n.66. If the GTOC has such facilities, then the area is an "exchange area." If not, then the area is a "serving area."

that the "international services" exception would include any additional services between the Northern Mariana Islands and points outside the islands, other than Hawaii.8/ Thus, although MTC, as a subsidiary of HTC, may provide interexchange services between the CNMI and Hawaii, its provision of such services between the CNMI and points outside the CNMI, other than Hawaii, is in direct violation of Section V(C) of the consent decree.9/

Notwithstanding MTC's direct violation of the decree's interexchange prohibition, MTC has not even attempted to provide any safeguards against cross-subsidization and unfair discrimination. As this Court has noted, "in any situation where both competitive and monopoly services are offered over jointly-owned or jointly-operated facilities, there is a significant danger of cross-subsidization which will harm competitors and competition in the unregulated competitive markets." Id. at 737. Moreover, in reviewing the consent decree, this Court recognized that GTE's provision of both interexchange and local exchange services gives GTE "both the incentive and the opportunity to use its control over the local

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8/ Despite the express limits placed upon HTC's "international services" exception, HTC continues to disregard such limits. For example, on April 14, 1993, HTC obtained an authorization from the Commission to establish international packet switching service on a blanket basis between Guam and various geographic points. Although IT&E filed a petition to deny because the provision of such services by HTC would violate the GTE consent decree, the Federal Communications Commission nonetheless granted HTC's application, subject to any ultimate determination by the DOJ and this Court on whether such provision of services violates the consent decree. See GTE Hawaiian Telephone Company Incorporated Application for Authority Under Section 214 of the Communications Act of 1934, as Amended, 8 FCC Rcd 2587 (1993).

9/ Even assuming that the "international services" exception is broadly construed to include MTC's "international," as opposed to its "domestic," traffic, MTC's interexchange services between the CNMI and other U.S. domestic points are nonetheless "domestic" in nature and, thus, not subject to the decree's "international services" exception. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, 95 FCC2d 554, 574-75 (1983) ("[T]here is a single national relevant geographic market (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) for interstate, domestic, interexchange telecommunications services with no relevant submarkets."); see also Manual for Filing International Traffic Statistics Under Section 43.61 of the Commission's Rules, 7 FCC Rcd 4965 (1992) (referring to the CNMI as a "U.S. offshore point"). Yet, MTC treats all off-island traffic as international, including cases from the CNMI to Guam.

monopolies to discriminate in favor of its own interexchange carrier." Id. at 739. To prevent any possibility of cross-subsidization and unfair discrimination, this Court insisted that GTE maintain complete separation between its local exchange and interexchange operations and expressly prohibited any discriminatory practices by GTE's local exchange operations in favor of its interexchange operations.

MTC, however, has chosen not to maintain complete separation between its local exchange and interexchange operations, despite the well-recognized dangers of improper cross-subsidization and unfair discrimination. In fact, during its presubscription campaign in connection with the recent implementation of its Feature Group D ("FG-D") equal access service in June 1993, MTC sent to subscribers presubscription ballots listing IT&E, PCI Communications Inc., and MTC itself as the choices for the subscriber's primary interexchange carrier ("PIC").10/ See Attachment 1. By listing itself as a PIC choice, MTC marketed and identified its interexchange services with its local exchange service and made no effort to avoid any appearances of impropriety or self-promotion. At the very least, MTC's provision of both local exchange and interexchange services on a structurally integrated basis contravenes the fundamental principles of fair competition proclaimed by this Court in GTE.

Despite IT&E's diligent attempts to bring this matter to the DOJ's attention, the DOJ has yet to take definitive action to resolve the issue. In a letter dated May 30, 1992, and in other subsequent correspondence, IT&E requested the DOJ to investigate MTC's business

10/ PCI Communications Inc. never inaugurated long distance service utilizing FG-D equal access, and thus, IT&E remains MTC's only competitor for domestic and international switched services originating from the CNMI.

conduct to determine whether MTC fully complies with the consent decree and to enforce the decree's provisions, if appropriate. Although GTE submitted to the DOJ a response to IT&E's complaints on November 2, 1992, and later initiated conversion to a limited and localized form of FG-D equal access to resolve some of IT&E's complaints, no action was taken by the DOJ to enforce the decree's interexchange prohibition against MTC.

B. MTC's Denial of Equal Access

Section V(A) of the consent decree requires the GTOCs to provide to all interexchange carriers and information service providers access that is "equal in type, quality, and price." This equal access obligation is reinforced by Section V(B)'s prohibition against discrimination by the GTOCs in favor of GTE's interexchange, information, and equipment manufacturing service with respect to interconnection, technical information, exchange access services, and planning for new facilities and service. Despite these provisions, MTC has continued to use its local exchange monopoly in the CNMI to deny IT&E equal access and to favor its own interexchange services.

1. MTC's Long-Standing Failure to Implement Equal Access

Beginning in 1986 and, to the best of IT&E's recollection, at least once each year thereafter, IT&E regularly requested improved forms of trunkside access from MTC, including simpler dialing procedures and Automatic Number Identification ("ANI") delivery for billing. These have included specific requests for FG-D equal access as well as requests for other alternative forms of trunkside access. Pursuant to Section V(A) and Appendix B of the consent decree, each GTOC must provide equal access to other interexchange carriers as promptly as possible, but in no event later than twelve months after receiving a written request for equal access from an interexchange carrier. Yet, despite IT&E's many requests for equal access and notwithstanding MTC's state-of-the-art Northern Telecom digital switching equipment installed throughout the CNMI since 1985, MTC refused to provide equal access dialing and billing procedures until as recently as June 1993, when MTC began offering a limited and localized form of FG-D equal access service.11/

2. Prevention of Access to IT&E's Long Distance Service Through MTC's Total Call Blocking Feature

Furthermore, despite MTC's recent conversion to a localized form of FG-D equal access, MTC continues to deny IT&E access service that is equal in type, quality, and price. For example, after MTC converted to FG-D equal access in June 1993, MTC continued to maintain a total long distance call blocking ("TDN") function, which prevented subscribers, who already had selected their PIC in the presubscription balloting process, from accessing their PIC by direct dialing a "011+" code. Moreover, subscribers could not override the TDN function by dialing either a "10XXX" alternative access code or a Feature Group B "950-0XXX" access code. This total call blocking function affected not only subscribers' private telephone lines, but also certain public pay telephones. IT&E has reason to believe that while the TDN function prevented subscribers from accessing IT&E's services, it did not similarly prevent subscribers from accessing MTC's long distance services.

11/ The conversion essentially involved a shift from lineside access to trunk side access, but MTC implemented FG-D's characteristic "1+" presubscription dialing only within the three islands that make up the CNMI. Dialing to and from the United States still requires use of the "011" international code.

For a long period of time, MTC was completely unwilling to remove this call blocking function, even though subscribers had expressly selected IT&E as their PIC. MTC also refused to honor IT&E's agency authority to cancel the call blocking function and insisted instead that such authorization come directly from the subscriber. While insisting on such direct authorization from IT&E's subscribers, MTC at the same time failed to notify them that they must make such authorization before they can place calls with IT&E. Thus, IT&E's subscribers, who assumed that such authorization was made when they selected IT&E as their PIC, were mistakenly led to believe that the problem is with IT&E's service and therefore became more inclined to choose MTC as their PIC instead. To correct this MTC-created problem, IT&E had to shoulder the burden of identifying which of its subscribers were affected by the TDN function and then encouraging these subscribers to pursue release of the TDN function directly with MTC. Although the problems caused by MTC's call blocking function have since been largely alleviated, the sustained period of time during which MTC insisted on maintaining its call blocking function nonetheless resulted in a denial of equal access to IT&E, imposed significant costs on IT&E's long distance business, and gave MTC an unfair competitive advantage that persists today.

3. MTC's Unlawful Access Charges

Another example of MTC's continued denial of equal access involves its access service charges. For a long distance call originating from outside of the CNMI and terminating in Rota. IT&E must hand off the call to MTC in Saipan. Under its initial tariff filed with the Commission. MTC assessed IT&E a terminating access charge of approximately $.54 per minute to carry the call from Saipan to Rota, as opposed to a toll